

SECTION 9: TOBACCO PRODUCTS AND SMOKING OF TOBACCO PRODUCTS IN PUBLIC PLACES

A. Definitions.

- (1) Bar or Cocktail Lounge. Any establishment or place within a restaurant primarily engaged in the business of dispensing alcoholic or other beverages and where if food is served, it is served only in the form of a snack or appetizer.
- (2) Enclosed Area. Any area covered by a roof and surrounded by walls with appropriate openings of ingress and egress.
- (3) Health Care Facility. Any office or institution providing individual care or treatment of human medical, physiological or psychological illness, which definition shall include but not be limited to hospitals, doctor's offices, nursing and convalescent homes, and senior citizen residential facilities.
- (4) Minor. Any individual under eighteen (18) years of age.
- (5) Person. Any individual, firm, partnership, association, corporation, company or organization of any kind.
- (6) Place of Employment. Any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to work areas, employee lounges, employee restrooms, conference rooms and employee cafeterias. A residence, including a home occupation, is not considered by this ordinance to be a place of employment.
- (7) Public Conveyance. Any mass transit vehicle or school bus.
- (8) Public Meeting. Any gathering or assembly of individuals held in any room or chamber wherein public, civic or governmental business is conducted and which is open to the public either as participants or spectators.
- (9) Public Place. Any enclosed area to which the public is invited or in which the public is permitted, not including the offices or work areas not entered by the public in the normal course of business or use of the premises. A residence is not a public place.
- (10) Public Restroom. Any restroom, bathroom, or toilet facility that would also meet the definition of a Public Place herein.
- (11) Restaurant. Any structure or premises where the principal activity involves the serving of prepared food with or without alcohol, except where the definition of bar herein is met, for customers' on-premise or off-premise consumption. Cafeterias and lunch counters are included in this definition while drive-in eating establishments are not.
- (12) Retail Store. An establishment whose purpose is to offer for sale and sell to consumers, not for resale, goods, wares, merchandise and food, which items are purchased for use and/or consumption off the premises.
- (13) Service Line. A line of persons formed for the securing of a service or product on a first-come first-served basis.
- (14) Smoking. The lighting, holding, carrying of, inhaling and exhaling of the smoke of a tobacco product, which definition includes but is not limited to the carrying or holding of a lighted pipe, cigar or cigarette of any kind or any other lighted smoking equipment or device.
- (15) Sports Arena. An indoor facility primarily used for sports, cultural or other similar events.

- (16) Theater. Any indoor facility primarily used for the exhibition of any motion picture, stage drama, musical recital, musical concert, dance, lecture or other similar performance.
- (17) Tobacco Product. The product derived from the dried leaves of any one of the various species of Nicotiana, including but not limited to the species Nicotiana Tabacum, the broadleafed native American plant, which is utilized for smoking.
- (18) Tobacco Product Vending Machine. Any self-service device that dispenses tobacco products either without charge or upon deposit of any coin, paper currency, token, card, key, or other item. The term does not include any such device that is in storage or in transit.

B. Prohibition.

- (1) Except as provided in Subsection C of this Section, smoking is unlawful in the following public places during the hours in which they are open to the public:
 - (a) Art galleries, libraries, museums, and similar cultural facilities;
 - (b) Classrooms and lecture halls.
 - (c) Elevators.
 - (d) Health care facilities.
 - (e) Public conveyances.
 - (f) Public meetings.
 - (g) Public places.
 - (h) Public restrooms
 - (i) Restaurants.
 - (j) Retail stores.
 - (k) Taxicabs
 - (l) Theaters.
 - (m) Service lines.
 - (n) Shopping centers and malls.
 - (o) Sports arenas.

In each instance, no-smoking shall be designated by signs posted in conspicuous locations located at any entrance to and within such areas. Such signs shall be visible to the public and clearly recite the phrase "No smoking" and/or use the international no-smoking symbol.

- (2) Possession of tobacco products by minors unlawful.
 - (a) Except as provided in subsection (b) of this section, possession of a tobacco product by a minor is prohibited.
 - (b) A minor may possess a tobacco product:
 - (i) if in the presence of an adult parent, guardian, or other adult to whom the minor has been committed by a court; or
 - (ii) while in the course and scope of employment, but only if the possession of a tobacco product is pursuant to a lawful retail sale of

the tobacco product and the minor's employment is not otherwise prohibited by law.

(3) Tobacco Product Vending Machines Prohibited.

- (a)** Except as provided in subsection (b) of this section, tobacco product vending machines are prohibited within the corporate limits of the City of College Station.
- (b)** A person may own or allow the display or use of, a tobacco product vending machine if it is located:
 - (i)** in a Bar or Cocktail Lounge; or
 - (ii)** in a place of employment, provided that the tobacco product vending machine is located in such a manner so that only employees, not patrons or the general public, have access to the tobacco product vending machine; or
 - (iii)** in a private residence.

(Ordinance No. 2157 of December 14, 1996)

C. Exemptions.

- (1)** Retail tobacco stores whose primary activity is the sale or promotion of tobacco and tobacco products and accessories.
- (2)** Enclosed areas of shopping centers and malls that are external to the retail stores would be no-smoking except for areas that would be designated as smoking areas.
- (3)** Smoking as a part of a theatrical production.
- (4)** Designated areas of restaurants, whether currently in existence or to be established in the future, with an indoor seating capacity of fifty (50) or more where less than fifty per cent (50%) of the indoor seating capacity is designated as a "Smoking Area." In areas where smoking is permitted, existing physical barriers and ventilation systems shall be used in adjacent no-smoking areas. No-smoking and smoking areas shall be designated by signs visible to the public.
- (5)** Bars or cocktail lounges.
- (6)** Designated areas of health care facilities; each such facility shall designate separate rooms, including in-patient sleeping quarters, and areas in which smoking is permitted, using physical barriers and ventilation systems to minimize the smoke in adjacent no-smoking areas. No-smoking and smoking areas shall be designated by signs visible to the public.
- (7)** Designated areas of theater lobbies that are physically separate from the spectator areas. No-smoking and smoking areas shall be designated by signs visible to the public.
- (8)** Rooms of a restaurant utilized for private functions or banquets.

(Ordinance No. 1843 of March 22, 1990)

D. Unlawful.

- (1) A person commits an offense if he:**
 - (a)** knowingly, intentionally or by criminal negligence smokes in an area designated as prohibited under Subsection B;

- (b) knowingly, intentionally or by criminal negligence smokes in a posted no-smoking area;
- (c) knowingly, intentionally or by criminal negligence fails to post a no-smoking area sign as required by this ordinance;
- (d) knowingly, intentionally or by criminal negligence fails to inform any person who violates this ordinance, when such duty to inform arises as set forth in Subsection B;
- (e) knowingly, intentionally or by criminal negligence destroys or defaces a sign posted as required by this ordinance;
- (f) knowingly, intentionally or by criminal negligence fails to designate no-smoking and smoking areas as required by this ordinance;
- (g) knowingly, intentionally or by criminal negligence places or allows the placement of a tobacco product vending machine in violation of this ordinance;
- (h) knowingly, intentionally, or by criminal negligence possesses a tobacco product and is a minor who is not in the presence of an adult parent, guardian, or other person to whom the minor has been committed by a court and who is not in the course and scope of the minor's lawful employment.

(Ordinance No. 2157 of December 14, 1996)

E. General Provisions.

- (1) Nothing in this ordinance shall be construed to permit smoking where it is otherwise prohibited by law or regulation.
- (2) Nothing in this ordinance shall be construed as prohibiting any employer or person in control of premises from prohibiting smoking to a greater extent than is prohibited by this ordinance.
- (3) Nothing in this ordinance shall be construed as requiring structural changes or additions.
- (4) If any provision of this ordinance or application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions, or application thereof, of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are hereby declared to be severable.

(Ordinance No. 1843 of March 22, 1990)

F. PENALTY

A violation of this section shall constitute a misdemeanor and upon conviction thereof shall be punishable by a fine pursuant to the General Penalty set out in Chapter 1, Section 5, of this Code of Ordinances.

(Ordinance No. 2030 of September 9, 1993)